

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDELL PHILLIPS,

Plaintiff,

Case No. 2:10-cv-14734

v.

HON. GEORGE CARAM STEEH

NATIONAL BASKETBALL
ASSOCIATION, DAKTRONICS, INC.,
& FRANK KURTENBACH,

Defendants.

/

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION [DOC. #25]

On July 26, 2010, this court entered an opinion and order granting defendants' motion to dismiss. Plaintiff timely filed this motion for reconsideration on August 9, 2010.

Local Rule 7.1(g)(3) of the Local Rules of the United States District Court for the Eastern District of Michigan provides:

[M]otions for rehearing or reconsideration which merely present the same issues ruled upon by the court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

Plaintiff has pointed out one factual finding by the court which is erroneous, that being the finding that plaintiff failed to properly serve defendants Daktronics and Kurtenbach. In fact, the court, in granting plaintiff's application to proceed *in forma pauperis*, ordered that the United States marshal serve a copy of the complaint and

summons upon defendants. The court's order of dismissal was entered before service was perfected. However, this is not a palpable defect which requires a different disposition of the case for purposes of granting reconsideration. As the court explained and held, res judicata applies to bar plaintiff's most recent complaint, even as to the NBA and Kurtenbach, who were not named defendants in the prior action. Dismissal based on failure to serve process was an alternate reason for dismissal.

As to the res judicata argument in the motion for reconsideration, the court finds that plaintiff's motion simply reiterates earlier arguments which have been previously considered and addressed. Accordingly,

IT IS ORDERED that plaintiff's motion for reconsideration is hereby DENIED.

So ordered.

Dated: August 15, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 15, 2011, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk